

1 ROBERT S. MUELLER, III (CSBN 59775)  
United States Attorney

2 DAVID W. SHAPIRO (NYSBN 2054054)  
3 Chief, Criminal Division

4 MARK N. ZANIDES (CSBN 58717)  
Assistant United States Attorney

5 1301 Clay Street, Suite 340S  
6 Oakland, California 94612-5217  
7 Telephone: (510) 637-3697

8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12  
13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 LISA CHAN,

17 Defendant.

No. 00-40146 CW

PLEA AGREEMENT

18  
19 I, Lisa Chan, and the United States Attorney's Office for the Northern District of  
20 California (hereafter "the government") enter into this written plea agreement (the  
21 "Agreement") pursuant to Rule 11(e)(1)(B) of the Federal Rules of Criminal Procedure:

22 The Defendant's Promises

23 1. I agree to plead guilty to count one of the captioned indictment charging  
24 me with conspiracy willfully, and for purposes of commercial advantage and private  
25 financial gain, to infringe the copyrights of copyrighted computer software. I agree that  
26 the elements of the offense and the maximum penalties are as follows: 1) an agreement  
27 between me and at least one other person; 2) wilfully; 3) to infringe a copyright or

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1 copyrights; 4) it was for purposes of commercial advantage or private financial gain; 5)  
2 that a valid copyright exists; and 6) that at least one overt act was committed in  
3 furtherance of the conspiracy.

- |   |    |                                 |                          |
|---|----|---------------------------------|--------------------------|
| 4 | a. | Maximum prison sentence         | 5 years                  |
| 5 | b. | Maximum fine                    | \$250,000                |
| 6 | c. | Maximum supervised release term | 3 years                  |
| 7 | d. | Mandatory special assessment    | \$100                    |
| 8 | e. | Restitution                     | As ordered by the Court. |

9 2. I also understand that this guilty plea could result in my deportation. The  
10 government has made no promises to me in this regard.

11 3. I agree that I am guilty of the offense to which I will plead guilty,  
12 and I agree that following facts are true and correct.

13 a. Beginning prior to October, 1997, and continuing until June, 2000,  
14 I operated a commercial business involving sale and distribution of illegally replicated  
15 software without authorization from the copyright holder. This software had valid  
16 copyrights which were held by the Microsoft corporation and included:

- |    |      |  |
|----|------|--|
| 17 | i.   | Microsoft Office 2000 Professional, Registration No. 4-905-936;      |
| 18 | ii.  | Microsoft Office 97 Professional, Registration No. 4-395-984;        |
| 19 | iii. | Microsoft Windows 98, Registration No. 4-687-920;                    |
| 20 | iv.  | Microsoft Windows NT Server 4.0, Registration No. 4-395-758;         |
| 21 | v.   | Microsoft Windows NT Workstation 4.0, Registration No. 4-395-740 and |
| 22 | vi.  | Windows 95, Registration No. 649-4511.                               |

23  
24 b. As a part of and in furtherance of the conspiracy, I obtained CD-  
25  
26 Roms and disks containing illegally copied Microsoft software from my co-conspirators.  
27 I obtained labels, certificates of authenticity, manuals and licensing agreements which  
28

1 purported to be produced by Microsoft but were, in fact, counterfeit. I then packaged  
2 and/or caused to be packaged these counterfeit materials with illegally reproduced  
3 software for distribution. On occasion I obtained legitimate Microsoft software, removed  
4 the legitimate Microsoft Certificates of Authenticity from them, and caused the legitimate  
5 Certificates of Authenticity to be packaged with illegally copied software. In this  
6 manner, I deliberately made it appear as if the illegally copied software was legitimate  
7 Microsoft software when, in fact, it was not.

8 c. Doing business through CHL Microsystems and Microcurrent, I  
9 made it known that I could and would provide Microsoft software at prices below retail  
10 market prices. Between October, 1997, and June, 2000, I sold illegally replicated  
11 software without the approval of the copyright holder.

12 Overt Acts

13 d. As a part of and in furtherance of the conspiracy, I committed the  
14 following overt acts in the Northern District of California and elsewhere:

15 i. in or about the first week of August, 1999, I delivered for  
16 redistribution approximately 6,000 pieces of Microsoft Office 97 Professional software  
17 which had been illegally copied without the approval of Microsoft;

18 ii. on or about February 1, 2000, I sold two pieces of Microsoft  
19 Office 2000 Professional software which had been illegally copied without the approval  
20 of Microsoft;

21 iii. on or about February 7, 2000, I sold 100 pieces of Microsoft  
22 Office 2000 Professional software which had been illegally copied without the approval  
23 of Microsoft;

24 iv. on or about February 16, 2000, I sold 100 pieces of  
25 Microsoft Office 2000 Professional software and one sample each of Microsoft Windows  
26 98, 1st and 2nd editions, which had been illegally copied without the approval of  
27 Microsoft;

1 v. on or about February 29, 2000, I sold 50 pieces of Microsoft  
2 Windows 98, 1st edition, and 50 pieces of Microsoft 98, 2nd edition, and one piece of  
3 Microsoft Office 2000 Professional (retail box) which had been illegally copied without  
4 the approval of Microsoft;

5 vi. on or about March 14, 2000, I sold 25 pieces of Microsoft  
6 Office 2000 Professional (retail box) which had been illegally copied without the  
7 approval of Microsoft;

8 vii. on or about March 22, 2000, I sold one piece of Microsoft  
9 Office 2000 Professional (retail box), one piece of Microsoft Office 2000 Professional  
10 (CD only) and one piece of Microsoft Windows 98, 2nd edition, which had been illegally  
11 copied without the approval of Microsoft;

12 viii. on or about March 29, 2000, I sold 10 pieces of Microsoft  
13 Office 2000 Professional (retail boxes), 10 pieces of Microsoft Office 2000 Professional  
14 (CDs only) and 10 pieces of Microsoft Windows 98, 2nd edition, which had been  
15 illegally copied without the approval of Microsoft;

16 ix. on or about April 7, 2000, I sold 15 pieces of Microsoft  
17 Office 2000 Professional (retail boxes) which had been illegally copied without the  
18 approval of Microsoft;

19 x. on or about May 30, 2000, I sold 20 pieces of Microsoft  
20 Office 2000 Professional (retail boxes) which had been illegally copied without the  
21 approval of Microsoft.

22 4. I agree to give up all rights that I would have if I chose to proceed to trial,  
23 including the rights to a jury trial with the assistance of an attorney; to confront and cross-  
24 examine government witnesses; to remain silent or testify; to move to suppress evidence  
25 or raise any other Fourth or Fifth Amendment claims; to any further discovery from the  
26 government; and to pursue any affirmative defenses and present evidence.

27 5. I agree to give up my right to appeal my conviction, the judgment, and

1 orders of the Court. I also agree to waive any right I may have to appeal my sentence.

2 6. I agree not to file any collateral attack on my conviction or sentence,  
3 including a petition under 28 U.S.C. §2255, at any time in the future after I am sentenced,  
4 except for a claim that my constitutional right to the effective assistance of counsel was  
5 violated.

6 7. I agree not to ask the Court to withdraw my guilty plea at any time after it is  
7 entered.

8 8. I agree to pay restitution for all losses caused by the scheme or offenses  
9 with which I was charged and agree that the amount of restitution will not be limited to  
10 the loss attributable to the count to which I am pleading guilty. I agree that, before or  
11 after sentencing, I will, upon request of the Court, the government, or the U.S. Probation  
12 Office, provide accurate and complete financial information, release funds and property  
13 under my control, submit sworn statements and give depositions under oath concerning  
14 my assets and my ability to pay, surrender assets I obtained as a result of my crimes, and  
15 make a good faith effort to pay amounts I am ordered to pay as a fine, forfeiture, or  
16 restitution. Specifically, I agree that at the time I execute this plea agreement, I will  
17 execute a stipulation that all funds previously held in the Charles Schwab investment  
18 account number 2209-1484 in the Lai Heung Chan, and currently frozen by court order  
19 shall forthwith be repaid to Microsoft as partial restitution.

20 a. I agree to pay the special assessment at the time of sentencing.

21 9. I agree to cooperate with the U.S. Attorney's Office before and after I am  
22 sentenced. My cooperation will include, but will not be limited to, the following:

23 a. I will respond truthfully and completely to any and all questions put  
24 to me, whether in interviews, before a grand jury or at any trial or  
other proceeding;

25 b. I will provide all documents and other material asked for by the  
26 government;

27 c. I will testify truthfully at any grand jury, court or other proceeding as  
28 requested by the government;

- 1 d. I will surrender any and all assets acquired or obtained directly or  
2 indirectly as a result of my illegal conduct;
- 3 e. I will request continuances of my sentencing date, as necessary, until  
4 my cooperation is completed;
- 5 f. I will tell the government about any contacts I may have with any  
6 co-defendants or subjects of investigation, or their attorneys or  
7 individuals employed by their attorneys;
- 8 g. I will not reveal my cooperation, or any information related to it, to  
9 anyone without prior consent of the government;
- 10 h. I will participate in undercover activities and obey all instructions  
11 given to me by the U.S. Attorney's Office and federal agents  
12 conducting the investigation.

13 10. I agree that within four months of the date of entry of this plea of guilty, I  
14 will file such amended federal and state tax returns, personal and corporate, as may be  
15 necessary fully to report my personal and corporate income and expenses. I further agree  
16 to make good faith efforts promptly to repay of all outstanding taxes, interest and  
17 penalties thereon.

18 11. I agree that the government's decision whether to file a motion pursuant to  
19 USSG §5K1.1, as described in the government promises section below, is based on its  
20 sole and exclusive decision of whether I have provided substantial assistance and that  
21 decision will be binding on me. I understand that the government's decision whether to  
22 file such a motion, or the extent of the departure recommended by any motion, will not  
23 depend on whether convictions are obtained in any case. I also understand that the Court  
24 will not be bound by any recommendation made by the government.

25 12. I agree not to commit or attempt to commit any crimes before sentence is  
26 imposed or before I surrender to serve my sentence; violate the terms of my pretrial  
27 release (if any); intentionally provide false information or testimony to the Court, the  
28 Probation Office, Pretrial Services, or the government; or fail to comply with any of the  
other promises I have made in this Agreement. I agree that, if I fail to comply with any

1 promises I have made in this Agreement, then the government will be released from all of  
2 its promises, but I will not be released from my guilty plea.

3 13. If I am prosecuted after failing to comply with any promises I made in this  
4 agreement, then (a) I agree that any statements I made to any law enforcement or other  
5 government agency or in Court, whether or not made pursuant to the cooperation  
6 provisions of this Agreement, may be used in any way; (b) I waive any and all claims  
7 under the United States Constitution, Rule 11(e)(6) of the Federal Rules of Criminal  
8 Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal statute or rule,  
9 to suppress or restrict the use of my statements, or any leads derived from those  
10 statements; and (c) I waive any defense to any prosecution that it is barred by a statute of  
11 limitations, if the limitations period has run between the date of this Agreement and the  
12 date I am indicted.

13 14. I agree that this Agreement contains all of the promises and agreements  
14 between the government and me, and I will not claim otherwise in the future.

15 15. I agree that this Agreement binds the U.S. Attorney's Office for the  
16 Northern District of California only, and does not bind any other federal, state, or local  
17 agency.

18 The Government's Promises

19 16. The government agrees to move to dismiss any pending charges pending  
20 against the defendant in the captioned indictment at the time of sentencing.

21 17. The government agrees not to file or seek any additional charges against the  
22 defendant that could be filed as a result of the investigation that led to the pending  
23 indictment.

24 18. The government agrees not to use any statements made by the defendant  
25 pursuant to this Agreement against her, unless the defendant fails to comply with any  
26 promises in this agreement. The government will, however, tell the Court and the U.S.  
27 Probation Department about the full extent of the defendant's criminal activities in  
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1 connection with the calculation of the Sentencing Guidelines.

2 19. If, in its sole and exclusive judgment, the government decides that the  
3 defendant has cooperated fully and truthfully, provided substantial assistance to law  
4 enforcement authorities within the meaning of U.S.S.G. §5K1.1, and otherwise complied  
5 fully with this Agreement, it will file with the Court a motion under §5K1.1 and/or 18  
6 U.S.C. §3553 that explains the nature and extent of the defendant's cooperation and  
7 recommends a downward departure.

8 The Defendant's Affirmations

9 20. I agree that I am fluent in the English language and that I have read and  
10 understand this agreement completely.

11 21. I confirm that I have had adequate time to discuss this case, the evidence,  
12 and this Agreement with my attorney, and that he has provided me with all the legal  
13 advice that I requested.

14 22. I confirm that while I considered signing this Agreement and, at the time I  
15 signed it, I was not under the influence of any alcohol, drug, or medicine.

16 23. I confirm that my decision to enter a guilty plea is made knowing the  
17 charges that have been brought against me, any possible defenses, and the benefits and  
18 possible detriments of proceeding to trial. I also confirm that my decision to plead guilty  
19 is made voluntarily, and no one coerced or threatened me to enter into this agreement.

20  
21 Dated: \_\_\_\_\_

22 Lisa Chan aka Kwai Chan  
23 Defendant  
24  
25  
26  
27  
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1 connection with the calculation of the Sentencing Guidelines.

2 19. If, in its sole and exclusive judgment, the government decides that the  
3 defendant has cooperated fully and truthfully, provided substantial assistance to law  
4 enforcement authorities within the meaning of U.S.S.G. §5K1.1, and otherwise complied  
5 fully with this Agreement, it will file with the Court a motion under §5K1.1 and/or 18  
6 U.S.C. §3553 that explains the nature and extent of the defendant's cooperation and  
7 recommends a downward departure.

8 The Defendant's Affirmations

9 20. I agree that I am fluent in the English language and that I have read and  
10 understand this agreement completely.

11 21. I confirm that I have had adequate time to discuss this case, the evidence,  
12 and this Agreement with my attorney, and that he has provided me with all the legal  
13 advice that I requested.

14 22. I confirm that while I considered signing this Agreement and, at the time I  
15 signed it, I was not under the influence of any alcohol, drug, or medicine.

16 23. I confirm that my decision to enter a guilty plea is made knowing the  
17 charges that have been brought against me, any possible defenses, and the benefits and  
18 possible detriments of proceeding to trial. I also confirm that my decision to plead guilty  
19 is made voluntarily, and no one coerced or threatened me to enter into this agreement.

20  
21 Dated: \_\_\_\_\_

\_\_\_\_\_  
Lisa Chan aka Kwai Chan  
Defendant

23  
24 ROBERT S. MUELLER, III  
United States Attorney

25 Dated: \_\_\_\_\_

\_\_\_\_\_  
Mark N. Zanides  
Assistant United States Attorney

1 Defense Counsel Statement

2 I have fully explained to my client all the rights that a criminal defendant has and  
3 all the terms of this Agreement. In my opinion, my client understands all the terms of this  
4 Agreement and all the rights she is giving up by pleading guilty, and, based on the  
5 information now known to me, her decision to plead guilty is knowing and voluntary.  
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7 Dated: \_\_\_\_\_

\_\_\_\_\_  
Robert Breakstone  
Attorney for Defendant

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